

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

BARRETT C. SWAN,
Defendant,

v.

UNITED STATES OF AMERICA,
Plaintiff.

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No. 1:21-CV-0142-SNLJ

**MOTION FOR LEAVE TO AMEND §2255 MOTION
AND FOR EXTENSION OF TIME TO FILE REPLY**

COMES NOW, BARRETT C. SWAN, proceeding in *pro se*, motioning this Court to extend the time allotted to reply to government's positions regarding (1) my Motion to Vacate, Set Aside or Correct a Sentence and, (2) supplemental briefings on the effect of *Lewis v. United States* on my case. See Doc. 16. In support of this motion, I submit the following:

After granting several extensions of time, my reply brief, is currently due on August 25, 2022. Several factors outside of my control have made it necessary to file for another extension and/or leave to amend the original §2255 petition once more.

I. The Need to Amend my Initial §2255 Motion [Doc. 1]

The need to amend the original §2255 motion is due to new evidence disclosed to me this month. My trial attorney, Assistant Federal Defender Jennifer Booth, contacted me while I was in the Special Housing Unit (SHU) here at USP Marion. She both scheduled a phone call with me while I was being housed here, and sent a legal mail package detailing the issue she discovered which is highly relevant to this *habeas* action.

That issue involves and ineffectiveness claim regarding her PSR objections, specifically regarding my 2004 Missouri state conviction. See Criminal Docket, entry no. 89. The summary of the issue she disclosed involves her/my/our PSR objection to the use of that 2004 case to trigger the Armed Career Criminal Act. Her objection should have challenged the over-broad definition of “Cocaine” in Missouri statutes, rather than her actual argument (to wit, that the entire Missouri Drug Schedule was over-broad).

In light of the information she disclosed about that prior conviction, the PSR objections, and her representation on appeal, this issue is properly made on §2255 review. Further, like the *Wooden/Lewis* arguments I have supplemented that motion with once before, this issue is most properly raised on primary brief, not on reply.

Given the recent Eighth Circuit analysis of the identical issue *United States v. Oliver*, 987 F.3d 794 (2021), and the persuasive discussion on this precise issue

written by Hon. Phillips in the Western District, my second-successive request to supplement my §2255 Motion should be granted.

II. The Need for Another Extension of Time

Aside from the time it will take to properly research and brief the issue discussed in the previous section,¹ there is one other reason this Court should grant another extension of time.

Through no fault of my own, I have been housed in the SHU (the “hole”) here at USP Marion for the last several weeks. I am so housed because my cellmate committed conduct violations. While none of his actions implicate me at all, it is rather typical of this institution to segregate both cell occupants while disciplinary decisions are investigated and decided upon.

Here in the SHU, I have no access to study material which makes legal research impossible. Further, my access to word processing, computers, and other helpful tools in this unit is wholly gone. Without the assistance I am receiving from outside this institution, I would hardly be able to file this extension/supplement request at all.

At present, I have no idea when I will be released from the SHU, so I would ask for, and pray for, the Court’s patience here. I ask for sixty days’ allowance to

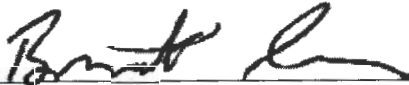
¹ Plus the time it will take the government to, again, reply/oppose that supplement...

file the supplement, and a briefing schedule be set for the government's response and my ultimate reply to all government arguemnts.

Conclusion

WHEREFORE I pray this Court grant my request for more time to fully brief these issues...

Submitted this 17th day of August, 2022.



BARRETT C. SWAN #32540-044
Marion USP
United States Penitentiary
P.O. Box 1000
Marion, Illinois 62959
Defendant/Petitioner in *Pro Se*

CERTIFICATE OF SERVICE

With my signature above, I attest that I have sent a true and correct copy of the foregoing **MOTION FOR LEAVE TO AMEND §2255 MOTION AND FOR EXTENSION OF TIME TO FILE REPLY** to the Clerk of the U.S. District Court and to the representative of the government by placing them in the inmate mail system on the signature date reflected above.

Service was made via U.S. Postal Mail using the addresses below:

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